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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 WORDTECH SYSTEMS, INC.,
12 a California corporation

No. 2:04-cv-01971-MCE-EFB

13 Plaintiff,

14 v.

MEMORANDUM AND ORDER

15 INTEGRATED NETWORK SOLUTIONS,
16 INC., dba INTEGRATED NETWORK
17 SOLUTIONS, CORP. aka
18 INTEGRATED NETWORK SOLUTIONS
19 aka INTEGRATED SYSTEMS aka
20 INTEGRATED NETWORK STORAGE
21 COMPANY aka INSC; et al.,

22 Defendants.
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28 Wordtech Systems, Inc. ("Plaintiff"), filed the instant
action on September 22, 2004, alleging that Defendants infringed
on various of its patents. On November 17, 2008, a jury
unanimously found for Plaintiff, determined the infringement was
willful, and awarded Plaintiff \$250,000. The Court subsequently
awarded treble damages, attorneys' fees, interest and costs.

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1 Presently before the Court are Defendants' Post-Verdict Motion
2 for Judgment as a Matter of Law and Motion for New Trial, both
3 filed March 26, 2009, as well as Defendants' First Amended
4 Motions for New Trial and to Amend the Judgment, both filed
5 April 20, 2009. For the following reasons, each of Defendants'
6 Motions is denied.¹

8 ANALYSIS

9 1. Defendants' Post-Verdict Motion for Judgment as a 10 Matter of Law

11 The court entered Judgment in favor of Plaintiff on
12 March 16, 2009, and Defendants filed a Motion for Post-Verdict
13 Judgment as a Matter of Law ("JMOL") (Docket No. 270) on
14 March 26, 2009. The Court then entered an Amended Judgment on
15 April 13, 2009, and Defendants subsequently filed a First Amended
16 Motion to Amend the Judgment (Docket No. 275) that appears
17 intended to amend the original JMOL Motion to incorporate the
18 Court's Amended Judgment. Accordingly, Defendants' initial
19 Motion is hereby denied as moot.

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27 ¹ Because oral argument will not be of material assistance,
28 the Court ordered this matter submitted on the briefing. E.D.
Cal. Local Rule 78-230(h).

1 **2. Defendants' Motion for New Trial**

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3 As above, Defendants originally filed the instant Motion for
4 New Trial (Docket No. 271) on March 26, 2009, and then, after the
5 Court entered its Amended Judgment, filed a First Amended Motion
6 for New Trial on April 20, 2009. Accordingly, like the prior
7 Motion, this Motion is also denied as moot.
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9 **3. Defendants' First Amended Motion to Amend the Judgment**

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11 Defendants' First Amended Motion to Amend the Judgment
12 (Docket No. 275) is actually a First Amended Motion for Post-
13 Verdict JMOL. Via this Motion, Defendants make multiple
14 arguments, each of which is addressed in turn.

15 Rule 50(b), by its terms, allows a party, after trial, to
16 "renew" a motion for judgment as a matter of law "made at the
17 close of all the evidence." A party cannot raise arguments in
18 its post-trial Rule 50(b) motion that it did not raise beforehand
19 in a Rule 50(a) motion offered during trial itself. Freund v.
20 Nycomed Amersham, 347 F.3d 752, 761 (9th Cir. 2003).

21 Like a pre-verdict motion for judgment as a matter of law
22 under Rule 50(a), a post-verdict Rule 50(b) motion tests the
23 sufficiency of the evidence offered in support of a party's
24 claims. Keenan v. Computer Assocs. Int'l, 13 F.3d 1266, 1268-69
25 (8th Cir. 1994). Judgment as a matter of law is proper if "the
26 evidence, construed in the light most favorable to the nonmoving
27 party, permits only one reasonable conclusion, and that
28 conclusion is contrary to that of the jury."

1 White v. Ford Motor Co., 312 F.3d 998, 1010 (9th Cir. 2002). A
2 motion for judgment as a matter of law should be granted only if
3 the facts and inferences point so strongly and overwhelmingly in
4 favor of one party that a decision in that party's favor is
5 mandated. See Seven-Up Co. v. Coca-Cola Co., 86 F.3d 1379, 1387
6 (5th Cir. 1996), quoting Boeing v. Shipman, 411 F.2d 365, 374
7 (5th Cir. 1969).

8 Defendants first argue that because there was no possible
9 infringement of the '932 patent, the jury improperly returned a
10 verdict in favor of Plaintiff as to that patent. According to
11 Defendants, Plaintiff introduced no evidence that any sales
12 relevant to the '932 patent occurred post-issuance. However,
13 Defendants never raised this argument in a pre-verdict Motion,
14 and, as such, have not preserved their instant contention for
15 discussion here. See Freund, 347 F.3d at 761. Accordingly,
16 Defendants' first argument is rejected.

17 For the same reason, several of Defendants' subsequent
18 arguments also fail, including the following: 1) due to the lack
19 of actual notice prior to the filing of the Complaint, Plaintiff
20 is only entitled to post-filing infringement damages, if any;
21 2) Plaintiff's non-operational CD autoloader trial exhibit was a
22 non-infringing device, but due to lack of expert testimony and
23 lack of claims construction, a confused jury rendered a verdict
24 contrary to the evidence; and 3) Plaintiff's evidence
25 demonstrated that a reasonable royalty was approximately five
26 percent, and thus, the jury verdict was excessive and punitive.
27 See id. Thus, Defendants' Motion is denied as to each of the
28 above claims.

1 Defendants' remaining arguments fare no better on the
2 merits. First, Defendants challenge the jury determination that
3 Defendants' actions were "willful." Defendants' argument is
4 premised on the theory that the Federal Circuit specifically
5 abandoned an affirmative duty of care, thus precluding a
6 willfulness finding in the instant case. In re Seagate, 497 F.3d
7 1360, 1371 (Fed. Cir. 2007). Defendants essentially contend that
8 Plaintiff was required to show "objective recklessness" rather
9 than "willfulness" in order to be eligible to obtain enhanced
10 damages and attorneys' fees. However, the jury was instructed
11 regarding the appropriate standard, and Defendants' argument is
12 rejected. See Jury Instructions, No. 21 (Nov. 18, 2008).

13 Next, Defendants contend that, after they received notice of
14 the subject patents, they relied on the doctrines of patent
15 exhaustion and implied license and, as such, did not infringe the
16 relevant patents. Defendants specifically argue that they were
17 protected under the aforementioned legal doctrines, because they
18 obtained the infringing devices from Tibi Szilagyi, who they
19 claim had a license or an implied license. See Intel Corp. v.
20 ULSI System Technology, Inc., 995 F.2d 1566, 1568 (Fed. Cir.
21 1993); Met-Coil Systems Corp. v. Korners Unlimited, Inc., 803
22 F.2d 684, 686 (Fed. Cir. 1986). However, Defendants produced no
23 evidence tending to show that Mr. Szilagyi had any such license.
24 Rather, by way of Mr. Szilagyi's trial transcript, Defendants
25 argue only that Plaintiff permitted Mr. Szilagyi to infringe the
26 patent, thus creating an implied license. Nevertheless, that
27 same transcript also provided evidence from which the Court
28 reasonably inferred that no such license existed.

1 Accordingly, Defendants' reliance on patent exhaustion and
2 implied license is misplaced, and their instant Motion is denied.

3 Defendants then argue that both Defendants Hamid Assadian
4 and Nasser Khatemi must be dismissed because there was a lack of
5 evidence of any individual sale of devices, of any corporate
6 officer liability and because there was no proven contributory
7 patent infringement. However, because Defendants failed to raise
8 any contributory infringement theory in a pre-verdict Motion,
9 their current argument, to the extent based on a contributory
10 infringement theory, is rejected. Additionally, Plaintiff's
11 evidence and Defendants' own trial testimony supported the jury's
12 verdict against Defendants Assadian and Khatemi.

13 First, Plaintiff produced evidence tending to prove that
14 INSC was not operating as a corporation during the time of
15 infringement. Additionally, Mr. Assadian testified that he was
16 an engineer, but he also indicated that he filled other roles
17 within INSC, though he was less than clear regarding any titles
18 he may have held. Likewise, Mr. Khatemi claimed he was listed as
19 president of INSC on various documents only to facilitate a
20 merger with another firm. He also rather unconvincingly claimed
21 that the papers produced at trial said "Zhatemi" rather than
22 "Khatemi," so, consequently, they did not tend to prove Defendant
23 Khatemi was actually an officer. Finally, Defendant Khatemi went
24 on to testify that he was unclear if he had been an officer of
25 INSC at any other time. Thus, because Plaintiff produced
26 substantial evidence of each individual Defendants' affiliation
27 with INSC, and because Defendants' own testimony was both vague
28 and less than credible, Defendants' instant argument is rejected.

1 Finally, Defendants dispute the Court's post-verdict
2 decision to award Plaintiff treble damages and attorneys' fees.
3 The Court is cognizant that Plaintiff objects to Defendants'
4 instant arguments because Defendants failed to raise these
5 challenges in a pre-verdict motion. However, since it would have
6 been impossible to raise challenges to post-verdict decisions in
7 a pre-verdict motion, the Court will view Defendants' instant
8 argument as a Motion for Reconsideration rather than a JMOL
9 Motion, and will address the arguments despite the fact that they
10 were not raised prior to the jury rendering its verdict.

11 A court should be loathe to revisit its own decisions unless
12 extraordinary circumstances show that its prior decision was
13 clearly erroneous or would work a manifest injustice.
14 Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816,
15 108 S. Ct. 2166, 100 L. Ed. 2d 811 (1988). This principle is
16 generally embodied in the law of the case doctrine. That
17 doctrine counsels against reopening questions once resolved in
18 ongoing litigation. Pyramid Lake Paiute Tribe of Indians v.
19 Hodel, 882 F.2d 364, 369 (9th Cir. 1989). Nonetheless, in
20 certain limited circumstances, a court has discretion to
21 reconsider its prior decisions.

22 A timely filed motion for reconsideration under a local rule
23 is construed as a motion to alter or amend a judgment under Rule
24 59(e). Schroeder v. McDonald, 55 F.3d 454, 459 (9th Cir. 1995).
25 A motion for reconsideration is treated as a Rule 59(e) motion if
26 filed within ten days of the judgment being entered, but as a
27 Rule 60(b) motion if filed more than ten days after judgment.

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1 See Am. Ironworks & Erectors Inc. v. N. Am. Constr. Corp., 248
2 F.3d 892, 898-99 (9th Cir. 2001). Since the instant Motion is
3 seeking reconsideration of a final judgement and was timely
4 filed, the Court will treat it as a Rule 59(e) motion.

5 Absent "highly unusual circumstances," reconsideration
6 pursuant to Rule 59(e) is appropriate only where 1) the court is
7 presented with newly discovered evidence; 2) the court committed
8 clear error or the initial decision was manifestly unjust; or
9 3) there is an intervening change in controlling law. School
10 Dist. No. 1J, Multnomah County v. Acands, Inc., 5 F.3d 1255, 1263
11 (9th Cir. 1993) (citations and quotations omitted). Mere
12 dissatisfaction with the court's order, or belief that the court
13 is wrong in its decision, are not grounds for relief under
14 Rule 59(e).

15 In its January 15, 2009, Memorandum and Order, the Court
16 explained both the factual basis and its own rationale for its
17 award of fees and costs to Plaintiff. Defendants have submitted
18 no newly discovered evidence, have failed to convince the Court
19 that it committed clear error or rendered a decision that was
20 manifestly unjust, and have not alleged that there has been an
21 intervening change in controlling law. Accordingly, Defendants'
22 challenge to the award of enhanced damages and fees is hereby
23 denied.

24 Accordingly, for the reasons just stated, Defendants' First
25 Amended Motion to Amend the Judgment is denied.

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1 **4. Defendants' First Amended Motion for New Trial**

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3 Defendants' also raise numerous challenges, some of which
4 have already been addressed, in a separate Motion for New Trial.
5 Plaintiff challenges this Motion as untimely because the
6 originally filed Motion (Docket No. 271) contained no legal
7 argument whatsoever that could have been amended pursuant to the
8 instant First Amended Motion (Docket No. 276). However,
9 assuming, *arguendo*, that the instant Motion was timely filed,
10 Defendants' instant arguments fail on the merits.

11 The grant or denial of a motion for new trial is left to the
12 discretion of the trial court. *Murphy v. City of Long Beach*, 914
13 F.2d 183, 186 (9th Cir. 1990). Rule 59 provides for a new trial
14 "for any of the reasons for which new trials have heretofore been
15 granted in actions at law in the courts of the United States."
16 In ruling on a motion for new trial, a court is bound by
17 historically recognized grounds. *Molski v. M.J. Cable, Inc.*, 481
18 F.3d 724, 729 (9th Cir. 2007) (citing *Zhang v. Am. Gem Seafoods,*
19 *Inc.*, 339 F.3d 1020, 1035 (9th Cir. 2003)). The Ninth Circuit
20 has recognized grounds for granting a new trial where "the
21 verdict is contrary to the clear weight of the evidence, is based
22 upon false or perjurious evidence, or to prevent a miscarriage of
23 justice." *Id.* (quoting *Passantino v. Johnson & Johnson Consumer*
24 *Prods.*, 212 F.3d 493, 510 n. 15 (9th Cir. 2000)).

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1 Through the instant Motion, Defendants argue that: 1) the
2 jury verdict was against the clear weight of the evidence for
3 infringement of the '932 patent; 2) the jury rendered a verdict
4 against the clear weight of the evidence by ruling that Hamid
5 Assadian and Nasser Khatemi infringed Plaintiff's patents; 3) the
6 jury rendered a verdict against the clear weight of the evidence
7 and the law by ruling that Defendants had received statutory
8 notice of possible infringement of plaintiff's patents;
9 4) Plaintiff's non-operational CD Autoloader trial exhibit was a
10 non-infringing device, but due to lack of expert testimony and
11 lack of claims construction, a confused jury rendered a verdict
12 against the clear weight of the evidence; 5) the Court overruled
13 Defendants' request for a jury instruction on "implied license"
14 which was supported by the evidence and the law; and 6) the jury
15 awarded damages for patent infringement against the clear weight
16 of the evidence. Several of Defendants' arguments fail because
17 Defendants neglected to object at trial. The remaining
18 contentions are rejected because the weight of the evidence
19 supports both the jury's verdict and this Court's decisions.

20 First, Defendants argue that they never engaged in any acts
21 of infringement after the '932 patent was issued, so they cannot
22 be liable for damages pertaining to that patent. However, the
23 evidence sufficiently supported the jury's decision to the
24 contrary. Indeed, Plaintiff produced circumstantial evidence
25 from which the jury could have inferred that infringing devices
26 were sold after the '932 patent was issued. Furthermore, David
27 Miller testified that even during trial advertising for the
28 infringing products continued to appear on Defendants' website.

1 This evidence is fatal to Defendants' assertion that, as a matter
2 of law, the jury improperly determined the '932 patent was
3 infringed.

4 Defendants then argue, once again, that Defendants Assadian
5 and Khatemi should be dismissed. The Court previously discussed
6 and rejected this argument, and its analysis has not changed from
7 the prior section. Accordingly, Defendants' Motion as to
8 Defendants Assadian and Khatemi is denied.

9 Next, Defendants claim that the Court erred in rejecting
10 their jury instruction as to "implied license." However, the
11 existence of an implied license is a matter of law, and the
12 evidence in this case supported the Court's decision that no such
13 license existed here. Carborundum Co. v. Molten Metal Equipment
14 Innovations, Inc., 72 F.3d 872, 877 (Fed. Cir. 1995). As such,
15 Defendants were not entitled to a jury instruction on that
16 theory, and their Motion is denied.

17 Defendants' next argument is similarly unavailing.
18 According to Defendants, the jury's determination regarding
19 notice was against the clear weight of the evidence. Defendants
20 are incorrect. There is a plethora of evidence in the record
21 supporting the jury's conclusion as to notice. Accordingly,
22 Defendants are not entitled to the requested relief.

23 Defendants then argue, for the first time, that Plaintiff's
24 non-operational CD Autoloader trial exhibit was a non-infringing
25 device, but due to lack of expert testimony and lack of claims
26 construction, a confused jury rendered a verdict against the clear
27 weight of the evidence. However, having never objected at trial,
28 Defendants' now-delinquent claim fails here. See Fed. R. Evid. 103.

1 Finally, Defendants argue that the damages award rendered by
2 the jury was against the clear weight of the evidence. However,
3 this Court finds it to be supported by the evidence at trial, and
4 cannot say that the award is "grossly excessive or monstrous."
5 Snyder v. Freight, Const., General Drivers, Warehousemen and
6 Helpers, Local No. 287, 175 F.3d 680, 689 (9th Cir. 1999),
7 quoting Los Angeles Memorial Coliseum Comm'n v. National Football
8 League, 791 F.2d 1356, 1360 (9th Cir. 1986). Accordingly,
9 Defendants are not entitled to relief.

10 In sum, the verdict in this case was not contrary to the
11 evidence, and Defendants' disagreement does not render it so.
12 Defendants' Amended Motion for New Trial is denied.

13
14 **CONCLUSION**

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16 Defendants' Post-Verdict Motion for Judgment as a Matter of
17 Law (Docket No. 270), Motion for New Trial (Docket No. 271),
18 First Amended Motion to Amend the Judgment (Docket No. 275), and
19 First Amended Motion for New Trial (Docket No. 276) are each
20 DENIED.

21 _____IT IS SO ORDERED.

22 Dated: May 22, 2009

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25 MORRISON C. ENGLAND, JR.
26 UNITED STATES DISTRICT JUDGE
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